19 39

Department of Revt

OFFICE Govt Board of Revenue

STATION Madras.

Mis **No.** 223

Dated 1-8-39

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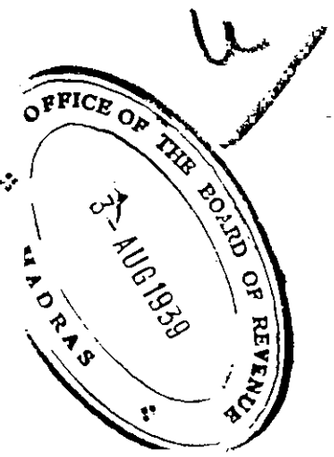
(SUBJECT.)

Omits — (S. Kanara) — Mangalore ... Comt — G.O. 131/39 — Railway ... fencing — Mangalore Taluk — Attavar Vg — S. Nos 252 and 252 — Distance — Junction

1 Suit adjourned to 11-8-39

Records as per list. R.P.117 & 4555

Ref. A.3-2824-39. South Kanara Collector's Office,
Mangalore, dated 26th July 1939.



From

Sri Diwan Bahadur M. V. Vellodi, B.A.,
Collector of South Kanara.

To

The Secretary to the Board of Revenue,
Land Revenue & Settlement, Madras.

Sir,

S U I T S--Mangalore District Munsif's Court--O.S. No.131/39--Railway lands and fencing--Mangalore Taluk--Attavar village--S.Nos. 252 and 253--Defence--Sanction requested-

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I enclose a copy of the plaint in the above suit which is for a declaration that the plaintiffs are the lawful owners of portions of S.Nos. 252 and 253 of Attavar village and also for a mandatory injunction to get the wire fencing removed from S.No.253. The facts of the case are given below:--

(i) S.Nos. 251, 252 and 253 belonged to the predecessor in-title of the 1st plaintiff. A portion of S.No.251, measuri 38 cents, the whole of S.No. 252 and a portion of S.No.253, measuring 6 cents, were acquired for the Azhikal--Mangalore Railway Extension in L.A.Case Nos. 68, 69 and 70 of 1903. Th sketches filed in the L.A. Records are not authenticated.

(ii) The registered extent of S.No. 251 was 42 cents, out of which, the portion measuring 38 cents was acquired. The plaintiffs admit that the remaining 4 cents of land continues to be in their holding, though in the Suit Notice, they stated that the whole of S.No.251 was in the occupation of the Railway.

(iii) S.No. 252 measured 90 cents. The extent of this

plot is shown as 59 cents in the L.A. Records. The plaintiffs have arbitrarily subdivided the field into 2 portions- one measuring 59 cents representing the portion acquired (No. 252/A in the plaint plan) and the other measuring 31 cents, which is, according to them, land not acquired (No.252/B in the plaint plan). They claim S.No.252/B as their own. According to them, the eastern boundary of the land acquired is S.No.252/B; but according to the L.A. Records, the eastern boundary is S.No.253. From this, it appears that it was the whole plot that was acquired, and not only a portion of it, as contended by the plaintiffs. The fact, however, remains that there is a difference in extent. But, the remedy of the plaintiffs lay in applying for a reference to ~~the~~ Court under Section 18 (1) of the L.A.Act within the period allowed in Section 18 (2). As the plaintiffs have failed to avail themselves of this provision, the award has become final and conclusive under Section 12 (1). The --- claim is, therefore, out of time now, and the objection regarding the difference in extent is barred by limitation.

(iv) In S.No. 253, a portion at the western end was acquired. The extent of this portion is shown as 6 cents in the L.A. records. Later on, it was discovered that the ---- land in the possession of the Railway comprised a much larger extent than what was shown as acquired. About 7½ cents of land was within the Railway fencing. In the year 1924, the Railway relinquished certain plots, one of which was S.No. 94/H. It is the field denoted as S.No.96/B2 in the sketch sanctioned by the Collector on 16-3-1927 (Taluk S.D.No. 353/36), which forms the western ~~land~~ portion of S.No. 253. The Tahsildar took charge of the land from the Railway, but reported that there was an encroachment on the land and that encroachment proceedings had been started in respect of it. The encroacher was the 1st plaintiff. She put in a warg

claim and filed a suit notice. The Tahsildar held an --- enquiry in the matter and reported that as the case was very much complicated on account of the various discrepancies noticed, the best way was to assign the plot to the 1st plaintiff. When the plot was re-surveyed, it was found that S.No.96/B, having a pentagonal shape was the plot acquired and S.No.96/B2 represented the land encroached upon. A proposal was made to the Agent of the South Indian Railway to the effect that the records might be corrected by including S.No. 96/B2 within the limits of the encroacher's holding. The Agent had no objection to the proposal in view of the -- fact that S.No.96/B1 in the possession of the Railway was -- about 7½ cents which was more than the area shown in the --- original award statement. The encroachment proceedings were therefore dropped and steps taken under the Madras Survey and Boundaries Act to change the eastern boundary of the Railway poramboke plot. S.No.96/B was then sub-divided into 96/B1 and 96/B2-- 96/B1 representing the area in the occupation of the Railway Department and enclosed by the Railway fence, and 96/B2 representing the area covered by the encroachment and lying outside the Railway fence. A notice under Section 9(1) of the Madras Survey and Boundaries Act was served on the 1st plaintiff. No appeal having been filed by her under Section 11 (1) and no suit also having been instituted within three years as required by Section 14, the record of survey has become conclusive proof that the boundaries of her holding have been correctly determined and recorded under Section 13. The claim for any portion of land from S.No.96/B1 (which is a -- part of old S.No.253) is, therefore, time barred.

2. The plaintiffs did not claim any relief in respect of the differences in area of S.Nos. 252 and 253 (portion) in the suit notice. Though mention was made of the ------ differences in it, their request was limited to the removal

of the fence. They were referred to the South Indian --- Railway authorities in this office D.Dis.No.6415/38, dated 13-12-1938, as it was found that the removal of the fence was purely a case between them and the South Indian Railway.

3. I have consulted the Government Pleader, Mangalore. He is of opinion that as the factum of possession and enjoyment is the real question to be raised and proved, it is -- best that the Railway should file the substantial written statement in the case, and that the Government should merely adopt it. A draft written statement prepared accordingly is enclosed, together with a copy of the statement to be filed by the Railway and a copy of the Government Pleader's letter Ref.No.A.402/39, dated 18-7-1939. I request that the ----- Board may be pleased to sanction the defence of the suit and to approve the draft written statement.

4. In this case, the plaint is dated 3-4-1939. A --- copy of the plaint together with the summons dated 10-4-1939, was received in this office on 24-4-1939. The suit stood posted to 12-7-1939. As the Government Pleader wanted to have a personal inspection of the plots along with the ----- Railway officials before giving his opinion, he was asked to obtain on 12-7-1939 a fairly long adjournment of the suit for filing a written statement. The Government Pleader inspected the plots on 9-7-1939. The suit now stands adjourned to ---- 11-8-1939.

5. The connected records detailed below are enclosed for reference.

(1) Collector's D.Dis.6415/38.
(2) do. R.Dis.1834/25.
(3) do. R.Dis. 496/24.
(4) Records of L.A.Award No.760/1903.
(5) do. 761/1903
(6) Taluk S.D. 353/1336.

For Collector.

In the Court of the District Munsif of Mangalore.

Original Suit No.131/1939.

Between:

1. Mrs. T.J.Fernandes.
2. Beatrice Mary Adelaide Fernandes

) Plaintiffs.

and

1. The Provincial Government of Madras represented by the Collector of South Kanara.
2. Agent and General Manager of South Indian Railway, Trichinopoly.

) Defendants.

Plaint under Section 26 Order VII Rules 1 to 8 of C.P.C.

The plaintiffs abovenamed beg to state as follows:-

I. 1st Plaintiff is the wife of Dr.L.P.Fernandes; 2nd plaintiff is the wife of Joseph Anthony Coelho, both are Roman Catholic Christians, Land-holders, aged about 55 and 35 years respectively; 1st plaintiff residing in Attavar, Mangalore Town and the 2nd plaintiff residing in Karwar of North Kanara District. Address for service of all notices and processes is that of plaintiffs Vakil Sri K.Rammohan Rao, Mangalore.

II. 1st Defendant is The Provincial Government of Madras-represented by the Collector of South Kanara, Mangalore and 2nd defendant is The Agent and General Manager, South Indian Railway, Trichinopoly. Address for service of processes is as above.

III. (1) That properties comprised in Revenue Survey Nos. 251, 252 and 253 of Attavar village of Mangalore Taluk-measuring 42 cents, 90 cents and 162 cents respectively belonged to plaintiff's predecessors and later, to plaintiffs.

(2) That in the year 1903 Land Acquisition proceedings were instituted in respect of the above lands for Railway

purposes and acquisitions were actually made. What was acquired and paid for was 38 cents out of Survey No.251, 59 cents out of S.No.252 and 6 cents out of S.No.253. Though 6 cents out of S.No.253 were shown as acquired, the acquisition proceedings show that only about 3 cents were acquired. The acquired portions were deleted from the patta of plaintiffs and their predecessor without their knowledge or consent and seem to have been classified as Railway Poramboke, with the consequence that several mistakes and anomalies have arisen. The whole of S.No.252 has been treated as Railway Poramboke though only 59 cents out of 90 were acquired. Out of S.No.251, 4 cents of land left unacquired have been allowed to continue in plaintiffs patta to this day. The Railway authorities have been changing the boundaries from time to time without regard to the extent acquired or to the correct boundary. The fencing that now stands at present on the locality was put up at its present site about 5 or 6 years ago by the Railway Contractor A.Ramappa who was then on terms of bitter hostility with plaintiffs, and the fencing enclosed as Railway land a much larger area than what was acquired or what ought to have been enclosed.

(3) That the portion that was acquired out of S.No.253 is at its western extremity and is triangular in shape with its base to the North and vertex to the South, the base being 20 links and the sides being 350 and 356 links in length. The entire survey No.253 is made up of I class wet lands, cocoanut trees and tenants houses and out-houses. There is also a tank in it to its North-west. This tank is clearly outside the portion acquired and forms part of plaintiffs' land and is the only source of water for raising the II and III crops in the adjoining fields of plaintiffs. The present fencing put up by the Railway authorities takes in an area of pentangular shape of much larger extent out of S.No.253 than what was acquired, and also a big portion of the tank. The portions of 252 and 253 which were unacquired but enclosed by the fencing as Railway land and the acquired portion

of S.No.253 consist of one vadi of I class wet land, 10 cocoanut trees and the tank and have however all along continued to be in the open and peaceful and uninterrupted possession and enjoyment of plaintiffs through their tenants, and belongs to the exclusive right of the plaintiffs both on account of their title and of their possession for more than the statutory period. To make matters quite clear a plan is produced herewith, showing unacquired and acquired portions of S.Nos.252 and 253 which are in plaintiffs possession and also the fencing that stands on the property.

(4) The errors committed by the Railway authorities in the matter of the boundaries came to light when at their instance, encroachment proceedings were launched against 1st plaintiff in 1921. After the full facts were exposed, the encroachment proceedings were dropped finally by a communication which reached the 1st plaintiff on the 7th of April 1927. There-after 1st plaintiff's repeated requests to the Railway authorities to set matters right have been fruitless, the Railway authorities referring her to the Revenue authorities and the latter to the former and the fencing put up in the meantime remains there to this day, and the mistakes are thereby perpetuated. Plaintiffs are thus constrained to file this suit for the necessary reliefs as the fencing as it stands is an obstruction to the convenient enjoyment of plaintiffs land that falls to the western side of the fencing, besides being a source of future trouble to ------- plaintiffs and their successors and a cloud on their title.

(5) That the statutory notice under Section 80 of Civil Procedure Code has been sent to the 1st defendant on 24.9.1938, giving two full months time for rectification of matters. A similar notice was also sent to the 2nd defendant who by an endorsement dated 4.10.1938 intimated that the matter is receiving attention and that a reply would be sent in due course. There-after plaintiffs waited so long and also caused two ------ reminders to be sent, but no reply has been received.

(6) The cause of action for the suit arose from 24.9.1938

and 24.11.1938 and since in Mangalore Town, within the jurisdiction of this Court.

IV. The suit is valued at Rs.110.0.0 and a Court fees of Rs.15/- and Re.1.10.0 are paid under Article 17-A of Schedule II and Section 7(iv)(d) of Court Fees Act.

V. Plaintiffs therefore pray for a decree for the following reliefs:-

(i) declaration that the plaintiffs are the lawful owners of the portions of S.Nos.252 & 253 of Attavar village, Mangalore Taluk, which are shown as 252/B and 253/C in the plaint plan. This relief is valued at Rs.100/- for purposes of valuation and a fixed Court-fee of Rs.15/- is paid under Article 17-A of Schedule II of Court Fees Act.	Rs.100/- (C)
(ii) directing defendants by a mandatory injunction to get the wire fencing removed from the site in S.No.253 shown as A B in the plan and in default permitting plaintiffs to get the work done through Court process at defendants cost. This relief is valued at Rs.15/- under Section 7(iv)d of Court Fees Act and Court fee of Re.1.10.0 is paid.	Rs.10/- (C)
Total:	Rs.110/-

(iii) for costs of suit and such other and further reliefs as the Court deems fit.

/True Copy/

For Collector.

13.5.88.

SOUTH INDIAN RAILWAY COMPANY, LIMITED.

Trichinopoly, 5th May 1939.

To

The Collector of

South Kanara,

Mangalore.

Sir,

O.S.131/39. D.M.C., Mangalore -
Mrs. T.J. Fernandez and another - Vs.
The Government of Madras and S.I.Ry.
for alleged encroachment of land in
Attawar village, Mangalore Taluk.

*****

I have the honour to request you to please let me know if you are entrusting the defence of the above quoted suit to the Government Pleader of Mangalore, and if he will take up the defence of the Railway also.

I have &c.,

Sd/- xx xx xx

for Chief Commercial Supdt.

/True Copy/

For Collector.

M.D'S.13/5.

11

In the Court of the District Munsif of Mangalore.

O.S.No.131 of 1939.

Between:

Mrs. T.J. Fernandez and another ... Plaintiffs.

and

The Province of Madras represented by the Collector of South Kanara and another. .. Defendants.

Written statement filed by Defendant 1 under Order VIII Rule 1 Civil Procedure Code.

The 1st Defendant above named begs to state as follows:-

This Defendant adopts the Written Statement filed by the 2nd defendant in the above case, and prays the suit may be dismissed with the costs of this Defendant.

South Kanara Collector's Office,
Mangalore, dated 26 - 7 - 1939.

For Collector.

1.8.39.

In the Court of the District Munsif of Mangalore.

Original Suit No. 131 of 1939.

Between:

Mrs. T.J. Fernandez and another ... Plaintiffs

and

Province of Madras represented by the Collector of South Kanara and another. ... Defendants.

Written Statement filed by Defendant 2 under Order VIII Rule 1 Civil Procedure Code.

The 2nd Defendant abovenamed begs to state as follows:-

1. The address of this defendant as given in the plaint is correct.

2. The suit is speculative and not sustainable at law.

3. This defendant denies that the properties comprised in Revenue Survey fields 251, 252 and 253 belonged to 2nd plaintiff at any time, and puts the plaintiffs to the strict proof thereof.

4. Allegations in plaint para 2 are incorrect and false in several particulars. R.S.Nos. 251, 252 and 253 stood registered in the name of their then owner Joseph Fernandes. In 1903 along with various other plots R.S.No. 251 described as 38 cents, R.S. 252 described as 59 cents and R.S.No.253 described as 6 cents were also acquired for the Azikkal - Mangalore Railway extension. R.S.No.251 was sub-divided into R.S.No. 251/1, 4 cents, and retained in the patta of the owner and R.S.No. 251/2 - 38 cents was transferred to the Railway. R.S.No. 252 was not sub-divided and the whole of it comprising 90 cents and not merely 59 cents was deleted from the patta of Joseph Fernandez and classed as Railway Poramboke without any objection from the Plaintiffs or anyone else. R.S.No. 253 was sub-divided into 253/A - 1 acre and 56 cents, and 253/B - 6 cents and the latter was transferred to the Railway.

5. What was actually taken possession of, and fenced by the Railway comprised, as discovered later, much larger extent than what was shown as acquired. The entire fields

R.S.No.251 and R.S.No. 252, and also about 7½ cents of R.S.2 came within the wire fencing put up by the Railway Company though according to the plans in the Field Measurement Book the extent of 253/B came to about 10¼ cents.

6. This defendant denies that only 3 cents of R.S.No.253 and 59 cents of R.S.No.252 were actually acquired by the Railway. As described by the boundaries the entire R.S.No. 252 and not merely a portion thereof was acquired and taken possession of by the Railway. Of R.S.No. 253, about 10¼ cents was actually comprised in the sketch sub-division classed as acquired, while about 7½ cents came within the wire fencing of the Railway.

7. The consequent changes made in the holdings and pattas were with the full knowledge and consent of the owners thereof and averments to the contrary are apparent after-thoughts for the purposes of this case.

8. This defendant submits that the present fencing has never been changed on the suit plots, much less about 5 or 6 years ago, and allegations of enmity between the plaintiffs and the contractor named in the plaint even if they were true have no bearing on the case.

9. This defendant denies that 4 cents out of R.S.No.251 continues in plaintiffs' patta to the date of the plaint. R.S.No. 251 ceased to exist as such in 1917 and no part thereof stands included in plaintiff's patta ever since.

10. The allegations in plaint para 3 are denied. It is not correct that what was acquired in R.S.No.253 was triangular in shape with the measurements given in the plaint; on the other hand it was pentangular in shape shown as A E D C B in the accompanying plan, as could be gathered from the Sub-division sketch in the Field Measurement Book.

11. This defendant denies the plaint allegations about the existence of a tank in R.S.No.253 outside the acquired area, or its being the only source of water for raising the crops in the plaintiffs' adjoining land. A small pond exists at the northwest, and has been magnified into a tank, and this defendant avers that

the pond within the Railway fencing has never had the attributes mentioned in the plaint.

12. The Plaintiffs have apparently sought to build up a case from antiquated records, intentionally ignoring subsequent events, Revenue Survey Numbers disappeared in 1917, and Town Survey Numbers were substituted instead. R.S.No. 251/1 and R.S.No. 251/2 were together marked as T.S.No.94, R.S.No. 252 as T.S.No.95 and R.S. 253/B as 96/B and all these classed as Railway Poramboke.

13. In 1922 during the Resurvey operations all the acquired portions according to the Field Measurement Book including old T.S.No. 94, 95 and 96/B were grouped along with some others into T.S.No. 94. It was then discovered that a portion of old T.S.No. 96/B which was treated as acquired land and marked D A E in the accompanying plan, lying to the east of the Railway fencing, had been encroached upon by the 1st Plaintiff.

14. This Defendant in the meanwhile found that certain portions of the Railway poromboke were not wanted for the Railway and sought to relinquish the same in favour of the Government.

15. Encroachment proceedings were thereupon instituted against the 1st Plaintiff in respect of T.S.No.94/H revised as 94/2, and the 1st Plaintiff in the course thereof acknowledged the right, title and interest of this defendant to the plots to the west of the Railway fence D.A. which are now the properties claimed in the plaint.

16. Local inspection held in the course of the encroachment proceedings brought to light the errors in the plotting of the extent of the acquired lands. It was found that the extent of the eastern portion of R.S.No. 253 taken possession of by the Railway as included in its fence was about 7½ cents, which was a little more than 6 cents which had been originally shown as acquired. To avoid all future disputes proceedings

were instituted to demarcate the boundaries between the Railway land and the adjacent land under the Madras Survey and Boundaries Act, and notices were issued to the registered holder, the 1st Plaintiff on 10-2-1927. Old T.S. 96/B was subdivided in accordance with the Railway fence D.A. into 96/B1 to the west of the fence and 96/B2 to the east of the fence; 96/B1 was made 94/1 and registered as belonging to the Railway and 96/B2 was made 94/2 and registered as belong to the 1st Plaintiff. Not only did the affected persons file no suit to set aside the order, but the 1st Plaintiff accepted the demarcation and signed the proceedings in token of her acquiescence. The encroachment proceedings were dropped and the boundary became final.

17. In 1934 there were further resurvey operations. T.S.94/1 (96/B1) was incorporated into T.S. 94/Railway land, and T.S.No. 94/2 (96/B2) was demarcated as 95/1 as 1st Plaintiff's Patta land, and they continue as such to the present day.

18. This defendant has produced herewith a composite plan showing the various plots mentioned in the plaint together with all the subsequent changes at various times. The existing fence D.A. has never been shifted at anytime, and the plots within the possessi of the Railway are those shown therein. This defendant denies the accuracy of the plaint plan and refers to the accompanying plan for a correct description of the properties involved in this suit.

19. As stated above, the entire R.S. field 252 having been acquired, the Plaintiff's claim with reference to the same is barred by the provisions of the Land Acquisition Act.

20. This defendant denies that any portion of old T.S.No. 96/B other than this small strip of D.A.E. measuring about 2¼ cents was ever within the possession and enjoyment of 1st Plaintiff or of any of the plaintiffs. The portion of old T.S. 96/B to the west of D.A., the Railway fence, has all along been in the open and continuous possession and enjoyment of this defendant and its predecessor the Madras Railway Company ever since the acquisition.

21. This defendant submits that the Plaintiff's claim that they have been in the possession and enjoyment of the suit plots

is false. The suit plots have been ever since the acquisition within and not beyond the Railway fence. The Plaintiff's have had no possession of the suit plots for the last twelve years, and more, and their right, if any, has long ago become barred and extinguished.

22. The present suit is barred also under section 14 of the Madras Survey and Boundaries Act 1923.

23. The suit in respect of relief No. 1 is not competent against the 1st Defendant as the notice under section 80 C.P.C. made no such claim.

24. The suit for bare declaration is not sustainable under section 42 of the Specific Relief Act.

25. The suit is barred by limitation and adverse possession.

26. This defendant does not admit any of the allegations in the plaint which are not expressly traversed herein.

Prays therefore the suit may be dismissed with costs.

Trichinopoly,
Date

Agent, S.I.Ry.,

I, the 2nd Defendant abovenamed do hereby declare the facts stated above are true to the best of my knowledge and belief.

Trichinopoly,
Dated

Agent, S.I.Ry.

Documents Produced.

Composite Plan of the suit Plots.

From the Government Pleader, Mangalore-
To the Collector of South Kanara, Mangalore-
No. Ref.A.402/39, dated the 18th July 1939.

S u i t s--Mangalore District Munsif's Court--O.S. No.131/1939--Railway lands and fencing--Mangalore Taluk -- Attavar village--S.Nos. 252 and 253--Defence.

Your Ref. A.3-2824/39, dated 6th June 1939.

****

As arranged I inspected the suit plots in the company of the Revenue Subordinates and the Railway draftsman and Prosecuting Inspector on 9th inst. at 5 p.m. On 12th inst. I entered appearance for the Government and the Railway and obtained time for filing the written statement till 11.8.1939.

2) The case is extremely complicated on account of survey errors. The suit clerk Sri Dasappaya has been of considerable assistance in unravelling ancient history. There is no doubt that the contention of the Plaintiffs that what was acquired and paid for was much less in extent than what has been regarded as acquired is substantially right. But it is also clear that they have had neither possession nor enjoyment of the plaint properties within the last twelve years, and their right if any has long ago been extinguished. The proceedings under the Survey and Boundary Act also bar the present suit.

3) As the factum of possession and enjoyment is the real question to be raised and proved I think it best that the --- Railway should file the substantial written statement in the case, and that the Government should merely adopt it. I have therefore drafted statement explaining the contentions in the name of the Company; but if you feel the Government should file a similar lengthy statement, the necessary verbal changes may be made in the Company's statement. In the statement, there are references to a plan 'accompanying the statement'.

As desired by me the Railway drafts-man has prepared a composite plan showing the various changes ever since the acquisition, and has taken it back to Trichinopoly for fair copying and signature. But plot referred to as A E D C B in para 10 of the Written Statement is old 96/B and A D E is 96/B2 and D A is the fence. I have asked him not to change these ---- letters, and A E D C B corresponds to the plan at page 1 of the Records ~~and~~ of L S.D.353/1336. (L)

4) The following documents indicated by the pages of the files are required to be filed before the date of trial. A copy of each document may be kindly directed to be taken and supplied to me for my office use.

R.Dis. 496/24: Documents Page 1, 3, 13, 17, 19, 21, 27, 49, 57, 69, 113, 115, 125_129, 131, 133-135, 137, 249, 251, 252, 254, 258, 260.

S.D. 353/36: Page 1, 3, 5, 7, 9.

R.Dis.1834/25: Page 1 to 5, 23, 25, 27, 31.

D.Dis.6415-38: Page 1 to 3, 13.

D.R.745/34:

D.Dis.1723/39- Page 1 to 4.

Award No.760.

Award No.761: Page 1, 7, 9, 25, 27, 35.

5) The written statement of the Government after approval and signature may be kindly sent so as to reach me before 11.8.1939.

6) The marginal records sent to me are herewith returned.-

Enclosures.-
1. D.Dis.6415/38. 2. D.Dis.1723/39.
3. R.Dis. 496/24. 4. R.Dis.1834/25.
5. Records of L.A.Award No.760/1903.
6. do. 761/1903.
7. Taluk D.R.745/1334.
8. Taluk S.D.353/36.

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(TRUE COPY)

For Collector.

1.8.39

Suit – (S. Kanara) – Mangalore District Munsiffs' Court – O.S. 131/3 – Rg. lands and fencing – Mangalore Taluk – Attavar Vge – S. Nos 252 and 253 – Defence – Sanctioned.

Pfl-407 E 4SJJ/39 Collr S Kanara, Rg A-3-2824-39 & 26-7-39 — Q

Rs Nos 2232 dated 9-8-39

The draft proceedings & telegram dt. 9/8/39 sent

The Board sanctions the defence of the suit and approves the draft written statement ~~to~~ submd. by the Collr, ~~subject to the following modifications~~:

2, In the draft written statement to be filed on behalf of the Rg Company ~~in the court~~ the references to the paragraphs of the plaint are not correct ~~The words~~ "para 2" appearing in para 4 of the statement and the words "para 3" appearing in para 10 ~~substitute~~ have to be replaced by corrected into "para III (2)" and para III respectively.

3/. The Collrs report in this Case dated 26-7-39 was received in this office only on 3-8-39. The suit stands posted to 11-8-39 for the attendance of the

Collr is ~~informed~~ invited to

B.S.6 ¶3-3 and he is informed that he should have submitted his report at least 15 days before the date fixed for the hearing.

4/ The foll: telegram will be sent:-

"Suit - Dt. Munsiff; Mangalore

Court - O.S. 131/39.

Defence sanctioned / Statement (and draft written) approved"

To

The Collr, S. Kanara

(with the records as per list at ¶2 c.7)

Despatched Typewriter also

9/8.

¶ 6.8.39, Th 70

proceedings despatched 9/8

9/8

9/8/39

No. 119

For Insurance Notices see reverse.
Stamps affixed except in case of uninsured letters not exceeding 2½ tolas or one ounce in weight or on which no acknowledgment is due.

Rs. As.

Date-stamp.

CHEI
13 AUG 39

Received a registered * addressed to

* Write here "letter," "postcard," "packet" or "parcel" with the word "Insured" before it when necessary.

Initials of Receiving Officer.

If insured.

Insured for Rs. (*in figures*) (*in words*)

Insurance fee Rs. As. (*in words*).

Weight / *Rates*

Tolas

Name and address of sender

M1

A.S.L.R.

/Note file/

(Date of Hearing — 11-8-39)

Suit — (S. Kanara) — Mangalore Dt. Munsiff's Court — O.S. 131/39 — Railway lands and fencing — Mangalore taluk — Attavar Vge — S. Nos. 252 and 253 — Defence.

Pp 1-4 — E 4553/39 coll. S. Kanara, Rep. A-3-2F24-39 & 26-7-39

pp 1-4 — The proposal in the Collector's letter read above is to defend a suit filed by two persons from whose predecessors-in-title some lands were acquired for the Agribithal — Mangalore Railway in the S. Kanara Dt. in 1903.

2/. The facts of the case are stated in the Coll's letter. The lands in question are S. Nos 251, 252 and 253 of Attavar vge. The plaintiffs want a declaration para IV (1) & (2), pp 6-7 that they are the lawful owners of portions of S. Nos 252 & 253 and also for a mandatory injunction to get the wire-fencing removed from S. No. 253. The Provl Govt and the Agent and Genl Manager, S. I. Rly are the defendants. The written statement proposed to be filed by the Rly. Co. is at pp 13-17 c.f. As the factum of possession and enjoyment is the real question to be raised and proved, it is proposed that the Provl. Govt should merely

dgt the substantial stake of the Ry. Company

3/. The case relating to the three S. Nos. may be examined.

S. No. 251

The regd extent was 42 cents. Of this only a portion measuring 28 cents was acquired. The plaintiffs admit in the plaint that the remaining extent of 14 cents continues to be in their holding. The Ry. Company however, in para 9 of its written statement denies this and states that R.S. No. 251 ceased to exist as such in 1917 and no part thereof stands included in the plaintiffs' patta ever since. The Coll. has not reported definitely as to the actual state of affairs. But it seems unnecessary for the Ry. to state that they are in enjoyment of the entire 42 cents, when the plaintiffs have not sought any relief in respect of this S. No.

para II(ii), p1c 3

A a 1 p6c 7

p14c 7

- Vide prayer in the plaint; p8c of

S No 252 : This S. No measured 90 cents. An extent of 59 cents alone is shown in the L.A records as having been acquired. The L.A records are unsatisfactory as the sketch in them shows the entire S. No as having been acquired. The plaintiffs in the plaint plan have arbitrarily subdivided S. No 252 and claim S. No. 252/B as the remaining extent of 31 cents not acquired from them. But, as admitted by themselves, in their suit notice the lands appear to have been acquired in one block and, therefore, the extent of 31 cents claimed by them must have been

para 1(iii), p1 2c 7

p35 ₹ 79 (E)

(E) - p7

Plan (C)

× para III(a), p6c 7

— do —

p1 1-2 g (I)

Para 6 - p14 LF
p. no 1(iii), p2 ?

in the occupation of the Ry Company. The Ry. Co. claims that the entire R.S no was acquired & taken possession of since acquisition. As pointed out by the Collr, the plaintiffs should have sought their remedy under sec 18(1) of the L.A Act. Now the claim is ~~barred~~ barred by limitation of time

p. 49 - 49, Pt. 7

S. No. 25-3 :- A triangular portion measuring 6 cents is shown in the L.A records as having been acquired in this S.No. Later on, it was found that actually an extent of 7½ cents was within the Ry fencing. In 1924 when the plot was resurveyed it was found that S.No 96/13 (part of old S.No 25-3), having a pentagonal shape was the land acquired of which S.No. 96/B-2 represented the ~~land~~ portion encroached upon by the first plaintiff. The 1st plaintiff asserted her wrong claim to S.No 96/B2 and with the Consent of the Agent of the S.I.Ry, S.No 96/B1 was registered as Ry land and S.No 96/B-2 as wrong land after due service of the notice under sec 9(1) of the Survey and Boundaries Act. It is pointed out that no appeal having been filed under Sec 11(1) and no suit having been instituted within 3 years as reqd by Sec 14 the plaintiff's claim to any portion of S.No. 96/B.1 is time barred under the Surveys and Boundaries Act.

p. no 1 p 15 9 (T)

p 191 (T)

X/1923

4/ The Collr has not noted the plan

referred to in the written statement of the Railway Co. It has been taken by the Rly. draftsman to Tuticorin for fair copying and signature. But it is pointed out that the sketch at p1 of (D) shows the plots correctly. According to this sketch, plot A B C D is S No. 96/B1 and plot A D E is S No 96/B2. The dividing line A D is the Railway fence. But according to the sketch filed by the plaintiffs, the Rly fence lies further east in the plot declared as belonging to the plaintiffs. Reasonably the sketch is incorrect.

p15 of

120

D

(C)

In the W.S of the Rly Coy it is pointed out in para 18 that the plaint plan is not accurate.

p16 of

57. The question for consideration is whether the Court should also dismiss the suit. This cannot be said to be a suit arising out of proceedings under the Land Encroachment Act, comes under the note to B.S.6 92(1)(iii), as the encroachment proceedings taken previously ended in the clear survey of the S. No. 96/B into S. No 96/B-1 and 96/B-2. There is now no encroachment in S. No. 96/B1. On the other hand the contention of the plaintiffs is that the Rly. Company has encroached on their property. The duty of preserving unimpaired the title of all Rly lands is laid upon the Rly Admn. under Rule 24 of the Revised Land Acquisition Rules, the Court can frame the litigation provided there

p. 627 - BSO Vol III No 20 C.S. 94

p. 591 - D

interests and those of the Ry Admn are the same. In this case the Govt also not have anything to lose in common with the Ry. The plaintiffs contention is that more lands than were actually intended to be acquired were taken by the Railway and that these portions should be returned to them. The Ry admits this but states that the plaintiffs claim to these portions is time-barred. Even if the suit goes against the Railway it will have to give back to the plaintiffs only the portions of lands that would have lawfully belonged to them. The Govt in any case will not have to lose anything by the result of the suit.

Pp 1-4 C 7 of (I) 6/ The plaintiffs gave a notice of suit to the Collr. The Collr caused an enquiry to be made in regard to the facts of the case and as a result of this, decided that the Govt. interests were not

p 3 C 7 of (I) involved in this case. He, therefore, rejected the suit-notice given to the Ry. Later, when the plaintiffs ~~impleaded the~~ filed the suit, impleading the Govt also as defendants,

para 3, p 4 C 7 the Collr consulted the local Govt. Pleader & the matter then G. Pleader

para 3, p 19 C 7 has expressed the opinion that in this case

the factum of possession and enjoyment is the real question to be raised and proved and that the Govt should merely adopt the substantial written statement filed by the Rly. It may be observed that the main point in the case viz the factum of possession and enjoyment in regard to the proy should be the concern of the Rly company only. ~~The Govt are not concerned either in this or any other aspect of the case~~

In accordance with the instructions in B.S.G 92(1), p677, Bk-70 (B.S.G Vol I) no action by the Govt seems necessary. The Collr may be informed that no action need be taken to defend the suit on behalf of the Govt. ~~If~~ If however the Bd considers that the Govt should also be a party to the defence, the Collr may be asked to report with a fair sketch whether para 9 of the Rly's statt may be omitted, and whether the Rly. fence exists in S.No 96/B-2 as would appear from the Kamil plan and whether the Rly will agree to bear the entire costs of litigation and damages

there is no harm p141 f. in retaining para 9, there is no A.S. 251 mno (p141 c.f.

B.S.G 9. Vol I p677, Bk-7 (C.S.G 94)

8/ Under B.S.G 93-3, the Collr's report relating to the defence of the suit should reach the Bd 15 days before the date fixed for the hearing. The suit stands adjourned to 11-8-39. The Collr's report dated 26-7-39 was recd in this office only on 3-8-39. This may be pointed out to the Collr.

p60, B.S.G Vol II

1/8 8/8 8/8 9

The main allegation being that land not acquired under the L.A. Act have been

are in the enjoyment of the Rly and

para. III (2) of the plaint — pl 6 c.f

taken possession of and are registered in Rev accounts as Railway premises, the Govt have been rightly impleaded as a defendant with the Railway Company.

pl 1,3-17 c.f

The D.W.S prepared on behalf of the Rly is in order. In paras 4 and 10 reference is made to paras 2 and 3 of the plaint. The refer should be to paras III (2) and III (3). This may be pointed out to the Cdr.

pl 5 & 6..

The defence may be sanctioned and the D.W.S prepared on behalf of the Govt which is submitted and may be approved.

pl 11..

hdv
9/8/39

Approved. M-1

2. Please bring a note duly showing action taken where the sketch is to be found.

9/8

SECRET
9-AUG 39

To A.S.

Draft noted.

The member's orders in para 2 above have been noted.

9/8/39

hdv
9/8/39

B.P.No. 2232

Dated 9-8-39

Single member M-1

Two Members

Full Board

	I-A.	A.D.S. & L.R.	Asst. Secretary Land Rev.	Sett.	Sep. Rev.	J.S. Secy	M 4	M 3	M 2	M 1
1. Open file seen by	—	—	—	✓	—	—	—	—	—	✓
2. Final draft seen by	—	—	—	✓	—	—	—	—	—	—
3. Now circulated to										
4. Initials.										

Passed for record.

~~Secretary~~
Joint Secretary.

~~A.S. (Gen.)~~

A.S. (L.R.)

A.S. (Sett.)

A.S. (Excise)

A.S.S.& L.R.

I.A.

44839

Note:- Entries not required to be scored out.

14/8

E.Sec. List of records sent with B.P. Rt. No. 2232 dated 9th August 1939.

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1. D.Dis. No.6415/38.
~~2. D.Dis. 1723/28.~~
3. R.Dis.1834/25.
4. R.Dis.496/24.
5. Records of L.A.Award No. 760/1903.
6. do. 761/1903.
~~7. Taluk D.R.745/1334.~~
8. Taluk S.D.353/36.

OFFICE OF THE BOARD OF REVENUE MADRAS

Acknowledged

~~To the Collector of South Kanara.~~

To Secy to Board Madras.

Yours faithfully
H. Sarvothama
Huzur & Sarishtedar
Collector's office
Mangalore.
14/8/39